

Staff Counsel
Barry A. Boström
Noel H. Johnson
Zachary S. Kester
Kaylan L. Phillips
Joseph A. Vanderhulst

Of Counsel
J. Christian Adams
Eric C. Behr
Cleta Mitchell
Michael Wilkins

July 11, 2013

Office of the General Counsel
Federal Elections Commission
999 E Street, N.W.
Washington, DC 20463

Re: MUR 6740

Dear Sir or Madam,

We have been retained to represent the National Organization for Marriage ("NOM") and Mr. Brian Brown (collectively "Respondents") in MUR 6740. The Statements of Designation of Counsel are enclosed. Please accept this response on behalf of both NOM and Mr. Brown.

No action should be taken against NOM or Mr. Brown in this matter. The complaint submitted by Mr. Karger does not contain any evidence or substantiation to support the allegation that the Federal Election Campaign Act of 1971 has been violated in any way. The complaint does not recite any facts which describe a violation of a statute or regulation over which the Commission has jurisdiction. 11 C.F.R. § 111.4(d)(4). The complaint is frivolous and should be dismissed.

Responses to Allegations

Respondents did not pay the Family Leader and Mr. Vander Plaats any money to secure their endorsement of presidential candidate Rick Santorum in the 2012 election. There was no coordination between respondents and Mr. Santorum, Santorum's campaign, or Mr. Vander Plaats for the purpose of funding the Leaders for Families committee. Mr. Brown and Mr. Vander Plaats are friends and allies who have frequently worked together on the importance social issue of the redefinition of marriage. They have never had any conversations regarding presidential endorsements or fundraising for federal candidates. The allegations to the contrary are spurious and the complaint frivolous.

1. Pay for Play: National Organization for Marriage (NOM), Rick Santorum and Bob Vander Plaats

Respondents have no information that would substantiate the media speculations regarding a solicitation by Mr. Vander Plaats for money in exchange for his endorsement in the 2012 Republican primary. Respondents also have no knowledge of any facts involving the creation and operation of the Leaders for Families committee.

2. Santorum's Campaign Was Broke

The allegation that NOM made a \$1 million payment to Mr. Vander Plaats, to the Family Leader, or to anyone to secure their endorsement of Mr. Santorum is entirely specious. The complaint provides no facts or evidence to support this allegation. It simply asserts that the alleged solicitation must have been fulfilled, that the money had to have come from somewhere, and that NOM must have done it. This is par for the course for Mr. Karger (see below), whose animosity towards NOM's work in defense of marriage is well known.

3. Vander Plaats Endorses Rick Santorum for President

Respondents did not help pay or raise any money to pay for an endorsement and did not help to create the Leaders for Families committee. Respondents were not involved in the creation or operation of the Leaders for Families committee. The facts referred to in the complaint do not support such an allegation.

First, NOM has retained the Bopp Law Firm in the past for some of its legal needs. But Mr. James Bopp has not been NOM's principal attorney since 2007. To Respondent's knowledge, it is well known that Mr. Bopp specializes in campaign finance law and has many clients who are conservative candidates, committees, and organizations. *See* www.bopplaw.com. The fact that he may have been retained by those who set up Leaders for Families, therefore, has no relevance to this complaint. It does not follow that Respondents would have been involved in any way with Leaders for Families. But even if Respondents had recommended that someone go to Mr. Bopp for legal services involving a federal political committee, in no way would this constitute a violation of the FECA.

Second, Mr. Frank Schubert currently does serve as NOM's political director and has done so since 2009. To Respondent's knowledge, it is well known that Mr. Schubert provides public relations services to many conservative candidates, committees, and organizations throughout the country. *See* www.missionpublicaffairs.com. The fact that he may have been retained by Leaders for Families, therefore, has no relevance to this complaint. It does not follow logically that Respondents were involved in any way with Leaders for Families. But even if Respondents had recommended that someone go to Mr. Schubert for public relations services involving a federal political committee, in no way would this constitute a violation of the FECA.

Finally, Respondents make no comment regarding whether NOM's supposed donors gave money to Leaders for Families. Whether or not individuals have made donations to NOM is strictly

1507476818887

confidential information under federal law. In fact, Mr. Karger could only have obtained such information by illegal means. It is a felony under federal law for confidential tax information, including the identities or donors, to be publicly disclosed without authorization, which Mr. Karger appears to have been complicit in by the supposed facts included in this complaint. In any case, Respondents did not tell anyone to give to Leaders for Families. Even if they had, however, this would not constitute a violation of any part of the FECA, as there is no prohibition on anyone, including the candidate supported, encouraging others to give to an independent expenditure committee.

4. NOM's \$80,000 Down Payment to Vander Plaats in 2011

Respondents acknowledge that NOM made donations to The Family Leader and to Iowa Family Policy Council in 2011 totaling \$80,000. Consistent with its mission and tax-exempt purpose, NOM frequently makes donations to pro-family organizations across the country. The donation to Iowa Family Policy Council was made to defer the cost of the Thanksgiving Forum hosted by that organization in 2011, consistent with 11 C.F.R. §§ 100.92, 100.154, and 114.4(f)(3). These facts do not support in any way the allegation that Respondents paid Mr. Vander Plaats to endorse Mr. Santorum.

5. NOM and Santorum

The Marriage Pledge, Thanksgiving Presidential Forum, and any activity on NOM's blog did not constitute expenditures under the FECA. *See* 11 C.F.R. §§ 100.16, 100.26, 100.27, and 100.29; *see also* Coordinated Communications and Independent Expenditures, FEC, Updated February 2011, at 2. NOM did not endorse any candidate during the 2012 Presidential Primaries.

The Marriage Pledge did not contain express advocacy and did not constitute an endorsement of any candidate. Every viable Republican candidate in the 2012 Presidential primaries signed the pledge, except for Ron Paul and Herman Cain.

The Thanksgiving Presidential Forum was staged by a 501(c)(3) organization in compliance with 11 C.F.R. § 110.13 and NOM made a donation to that organization in compliance with 11 C.F.R. § 114.4(f)(3). And NOM's blog entries were not public communications regulated by the FECA. *See* 11 C.F.R. §§ 100.16, 100.26; *see also* Internet Communications and Activity, FEC, May 2006.

NOM's blog entries mentioning Senator Santorum did not constitute support of a candidate under the FECA or an endorsement of Santorum. NOM was simply giving news, commentary, and opinion on candidates who happened to agree with NOM's position on a social issue.

NOM advocates the protection of traditional marriage between one man and one woman. Accordingly, it is entirely within its right to freedom of speech and of association under the First Amendment to work with other organizations and leaders to further that message. None of this activity even suggests a violation of the FECA. Santorum has agreed on some occasions to help NOM in its efforts, as have many other socially conservative leaders.

15044381884

According to its campaign filings, ActRight is a non-connected political committee registered with the FEC. It is not affiliated or connected with NOM in any way.

6. Other NOM Investigations

NOM is currently under investigation in Maine and California for alleged violations of state campaign finance law. These complaints were filed by Mr. Karger as well and are also frivolous and without merit. According to state statute, as with the FECA, the commissions are required to follow up on complaints.

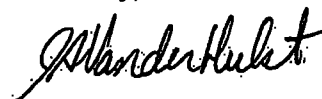
It is false that NOM is under investigation for money laundering in Maine. The investigation is ongoing and NOM has not been found in violation of any state laws. The investigation involves the question of whether certain activities occurred which would trigger Ballot Question Committee status under Maine law. NOM maintains that no such activity occurred.

Mr. Karger has filed a complaint against NOM in California that is equally frivolous. Even worse, it is based upon and included information that is confidential under federal law and was therefore filed illegally. *See* 26 U.S.C. § 7213(a)(3). NOM has not received any communications from the FPPC regarding this complaint in over a year.

Conclusion

In conclusion, this complaint should be dismissed and the FEC should take no further action against NOM or Mr. Brown. An affidavit from Mr. Brown verifying the facts in this response is forthcoming.

Sincerely,



Joseph A. Vanderhulst

150441885